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Ernie Fletcher  
Governor

Lajuana S. Wilcher  
Secretary

Commonwealth of Kentucky  
**Environmental and Public Protection Cabinet**  
Public Service Commission  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460

March 3, 2004

Hon. Lindsey Ingram, Jr.  
Stoll Keenon & Park LLP  
300 W. Vine St., Ste. 2100  
Lexington, KY 40507-1801

Re: Kentucky-American Water Company

Dear Mr. Ingram,

You have requested an opinion from Commission Staff regarding two issues: whether a regulated utility must receive Commission approval for purchase of the assets of a municipal water utility, and whether a regulated utility, after acquiring the assets mentioned above, can change the rates filed by the municipal utility by filing an initial tariff sheet with cost-of-service justification without a formal application to change rates.

A regulated utility is not required to receive Commission approval for the purchase of the assets of a municipal utility. KRS 278.020(4) & (5), which govern the transfer of assets of regulated utilities, require the acquirer of the assets to receive Commission approval before acquiring the assets of the regulated utility. KRS 278.010(3) exempts municipal utilities from Commission jurisdiction. Therefore, KRS 278.020(4) & (5) do not apply to the acquisition of a municipal utility.

Municipal utilities are only required to have on file the tariff rates for wholesale water sales to regulated utilities. Municipal utilities have no tariff on file to address other rates and, thus, have no tariffed rates to change. Therefore, in order to charge for water service of the newly-acquired municipal assets, the acquiring jurisdictional utility may take one of three actions: (1) adopt the rates currently being charged by the municipal utility; (2) charge the rates it is currently charging its own customers; or (3) file an initial tariff sheet with supporting documentation regarding projected cost-of-service.

Hon. Lindsey Ingram, Jr.  
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This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. If you have any question, please contact J.E.B. Pinney at (502) 564-3940, extension 427.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Dorman", with a long horizontal flourish extending to the right.

Thomas M. Dorman  
Executive Director

#11

### ROUTING - REQUEST

STOLL

- Please
- READ
  - HANDLE
  - APPROVE
- and
- FORWARD
  - RETURN
  - KEEP OR DISCARD
  - REVIEW WITH ME

To Legal -  
Please prepare  
Response  
Ann - FWI  
 From Tom

LP

300 WEST VINE STRE  
(859) 231-300

LINDSEY INGRAM, JR.  
859-231-3033  
ingramjr@skp.com

Date 2/9

February 9, 2004

**RECEIVED**

FEB 10 2004

Executive  
Director's Office

Mr. Thomas Dorman  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40601

RE: Kentucky-American Water Company

Dear Tom:

The purpose of this letter is to request an opinion from the staff of the Public Service Commission.

If a municipality in the Commonwealth of Kentucky contracts to sell assets owned by it and used to provide a service that would be regulated if supplied by an investor owned entity to a Commission regulated entity, is it necessary to seek Commission approval for the change of control of the ownership of the assets from the municipality to a commission regulated entity?

Secondly, can the regulated utility, after acquiring ownership of the assets, change the rates utilized by the municipality by filing an appropriate initial tariff with sufficient cost-of-service justification without a formal application to change rates. This question assumes that neither the municipalities' nor the acquirer's rates are appropriate.

The Commission has encouraged Kentucky-American Water Company to assist with the provision of regulated services where providers may be unable, for multiple reasons, to meet acceptable standards. Kentucky-American Water Company is willing to continue these efforts and answers to the above posed questions are important to that effort.

Mr. Thomas Dorman  
February 9, 2004  
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With best personal regards, I am

Very truly yours,

STOLL, KEENON & PARK, LLP

By *Lindsey Ingram, Jr. by [signature]*  
Lindsey Ingram, Jr.

/s/

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